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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights and the regulation of civilian acquisition, possession and use of firearms

Report of the United Nations High Commissioner for Human Rights

Summary

In its resolution 29/10, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit a report on the different ways in which the civilian acquisition, possession and use of firearms have been effectively regulated, with a view to assessing the contribution that such regulations make to the protection of human rights, in particular the right to life and security of person, and to identify the best practices that may guide States to further develop relevant national regulation. The present report is submitted pursuant to that request.

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I. Introduction

1. In its resolution 29/10, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit a report on the different ways in which the civilian acquisition, possession and use of firearms have been effectively regulated, with a view to assessing the contribution that such regulations make to the protection of human rights, in particular the right to life and security of person, and to identify the best practices that may guide States to further develop relevant national regulation.

2. To prepare the report, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sought inputs from Member States, international and regional organizations, national human rights institutions and non-governmental organizations.[1] The report further draws on a diverse range of public sources, including international and regional instruments, the practice of United Nations human rights mechanisms and reports of regional and humanitarian organizations, civil society, scholars and practitioners.

3. In the present report the High Commissioner provides an overview of the impact of the misuse of firearms on the enjoyment of human rights. Placing the topic within a broader context of regulation of civilian access to firearms, he examines the different ways and means that the civilian acquisition, possession and use of firearms have been regulated at the international, regional and national levels, discussing, where relevant, their efficiency and elements of best practices. He concludes with a number of conclusions and recommendations.

4. There is no internationally agreed definition of the term "firearms".[2] "Firearms" encompasses both "small arms" and "light weapons"; however, no agreement exists on what types of arms fall into either subcategory. The principal reference regarding the scope of "small arms" and "light weapons" is the one provided in the 1997 report of the Panel of Governmental Experts on Small Arms (see A/52/298). Furthermore, instruments related to firearms refer to "civilian access to firearms", "civilian possession of firearms" and "civilian ownership of firearms" in a general sense and as shorthand for a more complex set of rules covering the acquisition, possession and use of firearms. In the present report, "civilian access" encompasses all three components: acquisition, possession and use.

[1] Contributions were received from Australia, Bahrain, Belgium, Burkina Faso, Burundi, Colombia, Ecuador, Egypt, El Salvador, Estonia, France, Greece, Honduras, Jamaica, Madagascar, Mauritius, Montenegro, Morocco, New Zealand, Paraguay, Peru, the Philippines, Romania, Senegal, Spain, Switzerland, Turkmenistan, the United Kingdom of Great Britain and Northern Ireland and Uruguay, the International Small Arms Control Standards Inter-Agency Support Unit, the Office of the Ombudsman of Montenegro and Women's International League for Peace and Freedom. All contributions are available on the OHCHR website.

[2] The term is used in Human Rights Council resolution 29/10 and in the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime and the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials. Other documents, including reports of United Nations bodies such as the Panel of Governmental Experts on Small Arms, and regional instruments, such as agreements adopted by the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC), refer to "small arms and light weapons".

II. Impact of the misuse of firearms on the enjoyment of human rights

5. It has been widely recognized that firearms are the main tool used to commit acts of violence and crime (A/HRC/14/24/Add.7). The Secretary-General has described them as "weapons of mass destruction" (see A/54/2000, para. 238). Firearms are more widely used than any other weapon.[3] While the rate varies from region to region, recent estimates suggest that approximately 41-46 per cent of all homicides involve firearms.[4] About 86 per cent of homicides using firearms are deaths in non-conflict settings.[5] These estimates do not factor in suicides committed with firearms or deaths by firearms in conflict settings.[6]

6. Assessments of violence committed with the use of firearms are often based on rates of homicide and recorded conflict deaths and do not typically include the non-fatal consequences of firearm use. To fill this gap, the Secretariat of the Geneva Declaration on Armed Violence and Development has undertaken research and found that at least 754,000 individuals are victims of non-fatal firearms injuries every year.[7] Other negative and long-term consequences of firearms that are less documented include non-physical harm such as psychological trauma and stress, the effects of which can be felt even when a firearm is only used to threaten.[8] In addition, there is a growing awareness of the economic costs of armed violence.[9] One study assessed the economic impact of violence containment on the world economy at $9.46 trillion or 11 per cent of gross world product.[10] These figures show that access to firearms and their unlawful use pose a risk of significant harm to human life in various ways.

7. The submissions received from States and other stakeholders following calls for contributions to the present report helped build a better understanding of the direct and indirect impact of firearms on human rights. The submissions confirm that firearms lead to a broad range of acts which can affect a wide variety of human rights. They highlight the types of crime and violence in which firearms have been used, including homicides,[11] serious injuries, including those causing disability,[12] rape and other sexual violence, robbery, theft, assault, abduction, torture, forced displacement and domestic violence.[13] Some States reported that the majority of criminal violence on their territory was committed

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[3] United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide* (Vienna, 2013), pp. 15-16.

[4] Ibid., pp. 15-16. UNODC estimates 177,000 deaths in 2012, while the secretariat of the Geneva Declaration on Armed Violence and Development, in *Global Burden of Armed Violence 2015: Every Body Counts*, estimated an annual average of nearly 197,000 deaths for the period 2007-2012.

[5] Geneva Declaration, *Global Burden*, chap. 2.

[6] Neither the UNODC nor the Geneva Declaration study includes "self-inflicted death" committed with a firearm in their calculations. According to the World Health Organization (WHO), in 2012 alone there were some 800,000 suicides, with firearms accounting for up to 46 per cent of them in some parts of the world. See www.smallarmssurvey.org/about-us/highlights/highlights-20 .4/m44-firearm-suicides.html and WHO, *Preventing Suicide: A Global Imperative* (Geneva, 2014), p. 24.

[7] Geneva Declaration, *Global Burden*, p. 73. See also www.globalburdenofinjuries.org and A. Alvazzi del Frate, "a matter of survival: non-lethal firearm violence", in *Small Arms Survey 2012: Moving Targets* (Geneva, 2012), pp. 78-105.

[8] Geneva Declaration, *Global Burden*, p. 91.

[9] Ibid., chap. 5.

[10] Institute for Economics and Peace, *The Economic Cost of Violence Containment* (2014).

[11] France.

[12] Peru and Estonia.

[13] Ecuador and Burkina Faso.

with firearms.[14] Women and children were found frequently to be victims of firearm-related violence.[15]

8. Other submissions highlighted the dramatic consequences of the widespread availability and misuse of firearms, including changing the fates of individuals and even entire communities,[16] engendering a general sense of insecurity and fear, exacerbating crimes[17] and encouraging individuals to arm themselves for self-defence and defence of their property.[18] Daily life lived with the fear and threat of violence from firearms also has psychological consequences such as trauma[19] and insecurity.[20] Field surveys in one State showed that more than half the population was living in a state of fear of being attacked by a person with a gun.[21]

9. Many States agreed that deaths and injuries resulting from firearm-related violence were a major human rights issue.[22] It was stated that firearms were "the primary medium" of human rights violations and abuses[23] and that violence was often encouraged by the ready availability and abundance of firearms.[24] States argued that the listed forms of violence and crime, and the harm they caused, often constituted violations of the right to life, security[25] and physical integrity and of the rights to liberty and protection from torture,[26] among others.[27] One State pointedly stated that the misuse of firearms affected the entire spectrum of human rights.[28]

10. Economic, social and cultural rights affected by firearms include the rights to health,[29] education, an adequate standard of living and social security and the right to participate in the cultural life of the community (see E/CN.4/Sub.2/2003/29, para. 13). There is also a concern that insecurity caused by firearm-induced violence leads to the diversion of investment, a negative impact on productive assets such as tourism and family disintegration.[30] Insecurity has been identified as a main cause of poverty.[31] Moreover, States asserted that the misuse and availability of firearms could have an indirect and continued impact on access to the right to an adequate standard of living[32] as a result of the economic burden on families of those injured and killed.[33] The sheer impact of firearms on

[14] Honduras, Jamaica and Peru.
[15] Burundi.
[16] Estonia.
[17] Philippines.
[18] Burkina Faso and Women's International League for Peace and Freedom, regarding Cameroon.
[19] Estonia.
[20] Burundi.
[21] Burkina Faso.
[22] Burkina Faso, Burundi, Ecuador, Estonia, Honduras, Jamaica, Madagascar, Mauritius, Montenegro, Peru, the Philippines and Senegal. See also the reports of the Special Rapporteur on the prevention of human rights violations committed with small arms and light weapons (E/CN.4/Sub.2/2002/39, E/CN.4/Sub.2/2003/29, E/CN.4/Sub.2/2004/37 and Add.1 and A/HRC/Sub.1/58/27).
[23] Peru.
[24] Honduras.
[25] Bahrain, Burundi, Ecuador, Egypt, Montenegro and Morocco; Office of the Ombudsman of Montenegro.
[26] Jamaica.
[27] Peru.
[28] Estonia.
[29] Estonia, Honduras, Peru and the Philippines.
[30] Honduras.
[31] Madagascar.
[32] Burundi.
[33] Burundi.

individuals and communities is of such scale and complexity that a human rights lens is warranted in examining it.

III. Regulation of civilian access to firearms and its legal parameters

11. The present section describes steps taken within the United Nations in relation to small arms and provides an overview of relevant international human rights law and related findings of international and regional human rights mechanisms and of sectoral regional agreements and instruments as well as national legislation on the civilian access to firearms. Summarizing the different ways and means of regulating civilian acquisition, possession and use of firearms also helps to identify common standards and best practices in this area.

A. Setting the context

12. In 2001, the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects adopted a programme of action in which it expressed grave concern about the excessive accumulation and uncontrolled spread of firearms.[34] On the demand side, with respect to civilian access to firearms, international debates have so far been premised on the recognition that firearms possession on its own is not the cause of violence; rather, it is their irresponsible and illegal use that increases their lethality and raises concern. Driving factors behind the concern over firearms proliferation in private hands include a growing awareness of the harms and risks generated by uncontrolled and excessive availability of firearms, the rise in the number of intra-State conflicts, violence in non-conflict settings with firearms used as the weapons of choice[35] and the privatization of security provision.[36] The majority of firearm users are civilians, who are also the primary victims of firearm violence. According to a 2007 estimate, 650 million firearms out of the estimated 875 million in existence were owned by civilians.[37]

13. In its report the Panel of Governmental Experts on Small Arms identified regulation of civilian access to firearms as key to addressing transborder illicit flows of firearms. Diversion of privately owned firearms that have been stolen or lost is one of the major sources of supply. Stopping diversion requires tracking legal possession and trade of firearms and ensuring greater accountability of legal firearm owners for their responsible use. For international and national strategies aimed at curbing illicit trade to be effective, measures need to be in place to track privately owned firearms. To that end, the Panel of Governmental Experts stressed that measures to control civilian possession of firearms at the national level should be complemented by concerted international action to combat illicit circulation of firearms.[38] It recommended that all States should determine in their

[34] Meanwhile, international normative and policy efforts have also achieved significant progress in terms of standard-setting on the arms supplier side in the areas of arms transfers and combating illicit circulation. The entry into force of the landmark Arms Trade Treaty in 2014 is one example.

[35] Estimates suggest that only a small proportion (approximately 13 per cent) of all deaths by firearm occur during conflicts. See Geneva Declaration, *Global Burden*, chap. 2.

[36] On the relationship between private security firms and protection of the right to life, see the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/29/37/Add.1).

[37] According to the Small Arms Survey, gangs own 2 million-10 million firearms, private security companies own 1.7 million-3.7 million and non-State armed groups own 1.1 million-1.8 million. *Research Notes: Armed Actors*, No. 9, September 2011.

[38] Despite the absence of a commitment in the Programme of Action to regulate the issue of civilian possession of firearms at the national level, at the Third Biennial Meeting of States to Consider the

national laws which arms are permitted for civilian possession and the conditions under which they can be used; that they have adequate laws, regulations and administrative procedures to exercise effective control over the legal possession of small arms and light weapons and over their transfer in order to prevent illicit trafficking; and that States emerging from conflict should, as soon as practicable, impose and enforce licensing requirements for all privately owned firearms on their territory (see A/53/398, para. 80).

B. International human rights law

1. Due diligence obligations to protect human rights

14. Human rights law requires States to protect human rights with due diligence, which entails the obligations to prevent and sanction harmful private activity that impairs the enjoyment of human rights. In particular, the Human Rights Committee, in its general comment No. 31 (2004) on the nature of the legal obligations on States parties to the International Covenant on Civil and Political Rights, stated that those obligations would only be fully discharged if individuals were protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they were amenable to application between private persons or entities. The Committee further noted that there might be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States parties of those rights, as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities (see also E/C.12/1994/42, para. 102).

15. For example, the right not to have one's life taken arbitrarily implies an obligation on the part of States parties to take reasonable steps to prevent situations that could result in the violation of the right to life.[40] Accordingly, this right generates the positive obligation to prevent killing by private individuals and non-State actors in certain situations. It also implies putting in place effective criminal law provisions to deter commission of offences.[41] The State is thus under an obligation to take measures to prevent known, real and immediate risks to the life of an identified individual or individuals from the criminal acts of a third party.[42] Finally, a broad approach to defining the content of the due diligence obligation in relation to the right to life also encompasses "access to the conditions that guarantee a dignified existence".[43]

2. Due diligence obligations of States and civilian access to firearms

16. United Nations human rights bodies and mechanisms have examined and further articulated the human rights implications of the use of firearms by private entities, including for the due diligence obligations of States.

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implementation of the Programme of Action, held in 2008, the issue of civilian possession of small arms and light weapons was considered by some States to be important to the implementation of the Programme of Action (see A/CONF.192/BMS/2008/3, outcome document, para. 28 (g)).

[40] Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras*, judgment of 29 July 1988, para. 172.

[41] European Court of Human Rights, *Akkoç v. Turkey*, judgment of 10 October 2000, paras. 77-78.

[42] Ibid.

[43] Inter-American Court of Human Rights, *Case of the "Street Children" (Villagran-Morales et al.) v. Guatemala*, judgment of 19 November 1999, para. 144.

Charter-based human rights bodies

17. Charter-based United Nations human rights bodies have referred to civilian access to firearms for the past 10 years.[9] The Sub-Commission on the Promotion and Protection of Human Rights appointed a Special Rapporteur in 2003 to undertake a comprehensive study on the prevention of human rights violations committed with small arms and light weapons,[10] resulting in draft principles on the prevention of human rights violations committed with small arms which were endorsed by the Sub-Commission and annexed to its resolution 2006/23.

18. The draft principles systematically address States' obligations to prevent human rights abuses committed by private actors. They acknowledge the need to regulate private access to firearms in the right to life, liberty and security of persons and in the need to promote the human rights of all persons by preventing foreseeable small arms violence through appropriate measures to regulate small arms possession and use by private actors.[11] The list of measures to prevent small arms violence by private actors includes, inter alia, licensing requirements to prevent the possession of arms by persons who are at risk of misusing them; authorizing the possession of small arms for specific purposes only and their use strictly for the purpose for which they are authorized; and the periodic renewal of licences.

19. The draft principles further stipulate that before issuing a licence, Governments shall require training in the proper use of small arms and take into consideration, as a minimum, the applicant's age and mental fitness, the purpose for which the firearm is intended, and a prior record of criminal activity, misuse of firearms or acts of domestic violence. The draft principles also call upon States to exercise controls over the manufacturing of small arms; mark firearms for the purpose of identifying them and tracing their movements; implement legislative or other measures to ensure the investigation and prosecution of persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms; and criminalize the misuse of small arms and their unlawful possession as well as acts of domestic violence.

20. In resolution 2006/23, the Sub-Commission also stressed that the protection of human rights must be central to the development of further principles and norms regarding the availability, transfer and misuse of small arms and light weapons. It underlined the due diligence obligation of States to reduce small arms violence by private actors, including the obligation to prevent firearms from getting into the hands of those who were likely to misuse them. To that end, States were encouraged to adopt effective measures, such as laws and policies, regarding the possession, transfer and use of small arms and light weapons that complied with the principles of international human rights and international humanitarian law. It also encouraged United Nations bodies, human rights monitors in the field and non-governmental organizations to report specifically on any human rights violations committed with firearms.

21. The Special Rapporteur on violence against women, its causes and consequences has also discussed the topic in some detail in the context of the protection of women's rights. In 1996, the Special Rapporteur addressed civilian possession of firearms in a study dedicated

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[9] Including most recently in 2014 and 2015 by the Human Rights Council in resolutions 26/16 and 29/10.

[10] E/CN.4/Sub.2/2003/39, E/CN.4/Sub.2/2003/29, E/CN.4/Sub.2/2004/37/Add.1 and A/HRC/Sub.1/58/27.

[11] The draft principles refer in this context to paragraph 5 of Economic and Social Council resolution 1997/28 and resolution 9 adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

to identifying a framework for comprehensive legislation on domestic violence (see E/CN.4/1996/53/Add.2, para. 38). The Special Rapporteur recommended including a provision on automatic revocation of firearm licences in such legislation (see E/CN.4/1999/68, para. 57).

22. The Special Rapporteur has examined concrete cases where firearms have caused or exacerbated human rights abuses (see A/HRC/17/26/Add.5 and Corr.1, para. 10 and A/HRC/20/16, para. 68) and where the possession and use of arms (see E/CN.4/2005/72/Add.2, para. 80) as well as their proliferation (see E/CN.4/2005/72/Add.3, para. 10) were factors that generated and sustained violence and gender-based discrimination (see A/HRC/29/27/Add.1, para. 30). While women suffered "hostile gun displays" as a form of interpersonal violence (see A/HRC/17/26/Add.5 and Corr.1, para. 10), easy accessibility of firearms also contributed to suicides among females (see A/HRC/4/34/Add.2, paras. 77-79). The Special Rapporteur further examined the issue of firearms in the context of cultural family practices. Looking into forms of masculinity, she noted that "unless there is public education and campaigns to try and counter the negative images of violent men as ideals for a society, the heroic male stereotype in many societies may still be the one carrying the gun. Such an ideal has serious consequences for women (see E/CN.4/2002/83, para. 108)". She further noted that other, seemingly non-gendered practices, such as a gun culture, also had consequences for gender-based violence (see E/CN.4/1999/68/Add.2, para. 48).

23. In all these cases, the Special Rapporteur recommended that the use of firearms should be regulated and their misuse criminalized as measures to end impunity for violence against women. In addition, remedies for victims of domestic violence should include enhancing firearms control measures by ensuring an adequate background-check system to capture all relevant elements that determine an individual's suitability for gun possession; periodic review of licences to determine continued suitability; clear gun removal policies when intervening in domestic violence cases, including the possibility of removing guns after the first notification of a domestic dispute; and the criminalization of the illegal sale of firearms and of failure to report stolen guns (A/HRC/17/26/Add.5).

24. Finally, the issue of civilian access to firearms has been raised within the framework of the universal periodic review (see A/HRC/30/12, paras. 176.230-176.233 and A/HRC/30/11, paras. 125.40 and 125.43). In addition to expressing concern over firearm-related deaths and injuries, States recommended general measures to eliminate violence committed using a firearm and to tackle the proliferation of firearms, as well as specific steps such as expanding personal background checks for all persons seeking to acquire a firearm, enhancing oversight over private security companies and putting in place stronger safeguards to protect the safety of individuals.

Treaty-based United Nations human rights bodies

25. Treaty bodies have addressed three issues related to the use of firearms by private entities: the negative impact of firearms on human rights; the need to regulate civilian access to firearms; and the human rights parameters of firearm transfers.

Negative impact of firearms on human rights

26. The Committee on the Rights of the Child has stated in its general comment No. 9 (2006) on the rights of children with disabilities that the availability and accessibility of small arms and light weapons is a major cause of disability. The impact of violence committed with the use of firearms has also been considered by the Human Rights Committee in the context of the protection of minorities, women and children, with reference not only to the right to life, but also to the right to equality and non-discrimination (see CCPR/C/USA/CO/4, para. 10). The Committee on the Elimination of Discrimination

against Women, in its general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations similarly expressed concern that the proliferation of firearms has had a direct or indirect effect on women as victims of conflict-related gender-based violence, as victims of domestic violence and also as protesters or actors in resistance movements.

Need to regulate civilian access to firearms

27. Treaty bodies have emphasized prevention and interpreted the content of the general obligation to reduce harm and risks to individuals associated with the proliferation of firearms and their potential misuse. For instance, the Human Rights Committee has found that the obligation to effectively protect also requires efforts to curb violence that include the continued pursuit of legislation requiring background checks for all private firearm transfers (see CCPR/C/USA/CO/4, para. 10).

28. The Committee has also stated that the protection of the right to liberty and security of person as provided in article 9 of the International Covenant on Civil and Political Rights involved measures of control over civilian ownership of firearms (see CCPR/C/79/Add.50, para. 17).[46] The Committee has taken this provision to mean that the protection of individuals from foreseeable threats to life or bodily integrity includes the duty of States to protect their populations against the risks posed by excessive availability of firearms.[47] The significant number of small arms and light weapons has also been identified as a risk to the safety of populations, particularly children (see CRC/C/OPAC/BIH/CO/1, para. 23). The Committee on Economic, Social and Cultural Rights, concerned at the high number of suicides in a particular State, examined the easy accessibility of firearms in its analysis of the scope of the right to the enjoyment of the highest attainable standard of physical and mental health in that country. The Committee recommended that the State take measures to restrict access to firearms (see E/C.12/CHE/CO/2-3, para. 19).

29. The Committee on the Elimination of Discrimination against Women has read the regulation of civilian possession of firearms into due diligence obligations stemming from article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. To discharge its obligation of due diligence, a State was urged to enact legislation that strictly regulated the possession of small arms and to sanction violations (see CEDAW/C/PAK/CO/4, para. 14 (d)). The Committee held that robust and effective regulation of the arms trade, in addition to appropriate control over the circulation of existing and often illicit conventional arms, including small arms, to prevent their use to commit or facilitate serious acts of gender-based violence was needed (ibid., para. 29; see also CCPR/C/PHL/CO/4, para. 14).

30. Similarly, the Committee on the Rights of the Child has linked measures to prevent proliferation of firearms with the obligation to protect the right to life (see CCPR/C/PHL/CO/4, para. 14) as well as the right of children to safety and security (see CRC/C/OPAC/LKA/CO/1, paras. 44-45). The problem of firearms has also been raised in the context of the right of the child to freedom from all forms of violence. While characterizing conditions where guns and other weapons were easily available as harmful environments for children, the Committee, in its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, reaffirmed that States had the duty to incorporate the protection of children into legislative, administrative, social and educational measures and at all stages of intervention, from prevention to recovery and reintegration.

[46] See also general comment No. 35 (2014) on article 19 (liberty and security of person), para. 9.

[47] Ibid.

31. The Committee against Torture has also expressed the view that strict national firearm control measures are necessary. In particular, it has approached the issue by looking at the regulation of firearm users. The Committee, examining irregularities in the approval of firearm licences whereby licences have allegedly been granted indiscriminately and the firearms obtained therewith used to commit offences prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recommended that a State should strengthen the administrative measures necessary to control the indiscriminate issuance of firearms licences (see CAT/C/GUY/CO/1, para. 7). The Committee on the Rights of the Child has expressed a similar view. Concerned about the proliferation of firearms in a State, and particularly about the high proportion of children carrying them (see CRC/C/OPAC/BGD/CO/1, para. 23),[48] the Committee considered that it was imperative to take all necessary measures to ensure that children did not have access to small arms and/or light weapons and that those already in possession of weapons be disarmed (ibid., para. 24).

32. In view of the continuing high numbers of gun-related deaths and injuries in a State, the Human Rights Committee enjoined it to take all necessary measures to abide by its obligation to effectively protect the right to life and to curb gun violence, including through the continued pursuit of legislation requiring background checks for all private firearm transfers in order to prevent possession of arms by persons recognized as prohibited individuals under the law; ensure strict enforcement of the relevant domestic legislation;[49] and review the "stand your ground" laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when using deadly force in self-defence (see CCPR/C/USA/CO/4, para. 10).

33. The Committee on the Rights of the Child expressed appreciation for States' efforts to collect small arms and light weapons in the hands of civilians (see CRC/C/OPAC/BIH/CO/1, para. 24 (a) and (b) and CRC/C/OPAC/MNE/CO/1, para. 24) as well as measures aimed at raising awareness on the risks and dangers of firearms, which were elements of effective national arms control. The Human Rights Committee has emphasized the imperative of weapon collection schemes in post-conflict settings (see CCPR/C/AGO/CO/1, para. 12). Other recommendations made by the Committee on the Rights of the Child regarding measures to curb the proliferation of private possession of firearms have included international and regional cooperation with respect to the control of and eradication of surplus small arms and light weapons, including those in the possession of the civilian population (see CRC/C/OPAC/BIH/CO/1, para. 24 (a) and (b)). As a measure of prevention, the Committee, in general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, also recommended that States strictly control firearms in discharging its obligation to prevent interpersonal violence. It further stated that one way to exercise strict governmental control was by imposing controls on the illicit sale of firearms complemented by a policy to eradicate and control the informal availability of firearms (see CRC/C/SLV/CO/3-4, para. 32 and CRC/C/OPAC/LKA/CO/1, paras. 44-45).

34. In examining the information provided by a State regarding the non-proliferation of small arms, the Human Rights Committee expressed regret that the statistical data provided on the number of crimes committed involving small arms, investigations undertaken, prosecutions made, sanctions imposed on those responsible and measures taken to protect its population against the insecurity caused by small arms were insufficient. The Committee recommended that the State strengthen measures to collect small arms held by the

[48] On the general question of the overproliferation of small arms in general, see CRC/C/SDN/CO/3-4, paras. 74-75.

[49] For example, the Domestic Violence Offender Gun Ban of 1996 (the Lautenberg Amendment).

population and to reduce insecurity in its territory and further consider reinforcing its legislation in order to combat illegal possession and use of small arms (see CCPR/C/AGO/CO/1, para. 12). The Committee requested information from another State on the number of victims of gun violence and on the steps taken to protect human rights from risks associated with the proliferation of firearms (see CCPR/C/USA/Q/4, para. 9).

Human rights parameters of firearms transfers

35. Treaty bodies have also developed the human rights parameters of firearms transfers, thereby acknowledging the human rights dimension of the illicit and unregulated trade in firearms. The Committee on the Rights of the Child, for example, recommended the application of criteria based on the Convention on the Rights of the Child to the transfer of firearms. These include requiring regular public reporting on the export of firearms; a prohibition on exporting to countries where children are known to have been or are involved in armed conflict (see CRC/C/OPAC/UKR/CO/1, paras. 25-26);[50] application of general human rights criteria; an assessment of the impact that the export of weapons export has on the rights of children (ibid.); integration of a child-rights perspective in measures taken to prevent arms trafficking (see CRC/C/OPAC/BGD/CO/1, para. 24); adherence to the international framework on the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (see CRC/C/OPAC/EGY/CO/1, para. 32); and criminalization of illicit activities related to the manufacturing and trafficking of firearms (ibid.).[51]

3. Regional human rights bodies

36. The Inter-American Commission on Human Rights addressed the issue of the availability of firearms in its thematic report on security and its relationship to human rights,[52] in which the Commission provided an overview of the situation and proposed recommendations designed to assist member States in implementing their human rights obligations in this area. The Commission noted that the large numbers of firearms in private hands had contributed to violence against women, children, adolescents, indigenous populations and Afro-descendants. To address those complex problems, the Commission recommended that effective measures be adopted to guard against actions by private parties that threatened the right to life by addressing the factors that enabled violent behaviour to breed and multiply within society, especially those that controlled and reduced the number of firearms in private hands. The obligation to protect human rights also required regulating the activities of private security firms, in particular by establishing a public record of the weaponry carried by those firms and requiring that their employees be certified by the competent State agencies to show that they are qualified for their employment and that they have the physical and psychological aptitude and training (especially in the use of firearms) necessary to perform these types of tasks.

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[50] See also in this regard CRC/C/OPAC/MNE/CO/1, para. 25; CRC/C/OPAC/BEL/CO/1, para. 20-21; CRC/C/OPAC/KGZ/CO/1, paras. 8-9; CRC/C/OPAC/MDA/CO/1, paras. 14-15; CRC/C/OPAC/USA/CO/2, para. 41; CRC/C/OPAC/EGY/CO/1, para. 32; CRC/C/OPAC/BLR/CO/1, paras. 20-21; CRC/C/OPAC/MKD/CO/1, para. 19; CRC/C/OPAC/CAN/CO/1, para. 14; CRC/C/OPAC/AUS/CO/1, para. 28; CRC/C/OPAC/BIH/CO/1, para. 24; CRC/C/OPAC/KOR/CO/1, paras. 21, 22; CRC/C/ITA/CO/3-4, para. 72; CRC/C/OPAC/TUN/CO/1, paras. 17-18; CRC/C/OPAC/CZE/CO/1, para. 19; and CRC/C/OPAC/GRC/CO/1, para. 18.

[51] See also in this regard CRC/C/OPAC/BLR/CO/1, paras. 20-21; CRC/C/OPAC/MKD/CO/1, para. 19; and CRC/C/OPAC/BIH/CO/1, para. 24.

[52] Inter-American Commission on Human Rights. *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, 31 December 2009, para. 218.

C. Regional agreements and instruments regulating civilian access to firearms

37. A large number of binding and non-binding regional agreements and instruments have been developed to address the civilian acquisition, possession and use of firearms. The following texts have been developed in Africa: Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (2000); Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region (2001); Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials (2001); Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States (2004); and Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly (2010).

38. In the Americas, the Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects (2003) was developed. The European Union adopted Directive 91/477/EEC on control of the acquisition and possession of weapons (1991) and its amending Directive 2008/51/EC. In the South Pacific, the Legal Framework for a Common Approach to Weapons Control, also known as Nadi Framework (2000), was developed. In regions that have no common legal framework on firearms, model legislation has been developed to assist and inform national efforts to regulate, among other things, possession of firearms by civilians. Notable in this regard are the Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material (2002) and the Commonwealth of Independent States Model Law on Weapons (1997).[53]

39. The statements of purpose provided in the preambles to these regional agreements and instruments constitute a helpful guide to the rationale behind the regulation of civilian access to firearms. For example, in the preamble to Directive 91/477/EEC, the Council of the European Communities asserts that the rules contained in the Directive will generate mutual confidence in the field of the protection of the safety of persons. In its convention ECOWAS refers to the excessive and destabilizing accumulation of small arms and light weapons as well as their proliferation as the context for regional regulation. In the Nairobi Protocol the Ministers of Foreign Affairs of the participating States addressed the well-being of the population in the subregion and their right to live in peace. In the Nadi Framework the signatories established as the founding principle the possession and use of firearms as a privilege that is conditional on the overriding need to ensure public safety. In the preamble to the Central African Convention the signatory States recall, among other things, the Convention on the Elimination of All Forms of Discrimination against Women and Security Council resolutions on children and armed conflict. These references confirm the link between firearms control and human rights and support the approach adopted by the treaty bodies.

40. A comparative analysis of these normative instruments reveals common elements with regard to the regulation of civilian access to firearms: the requirement of national regulations stipulating conditions under which civilians may acquire, possess and use firearms; the requirement to establish sanctions for offences involving the misuse or unlawful possession of firearms; and international cooperation between member States in areas regulated by the respective instrument. All except the Bamako Declaration and the Andean Plan prohibit unrestricted access to firearms by civilians, while only the SADC

[53] See www.iacis.ru/upload/iblock/ceb/057.pdf.

Protocol, the ECOWAS Convention, the Nairobi Protocol and the Central African Convention ban civilians from accessing automatic or semiautomatic firearms.

41. All but the Bamako Declaration and the Andean Plan envisage the following normative elements: the establishment of a licensing system for the civilian acquisition, possession and use of firearms; record keeping; marking and tracing of firearms; regulations restricting the right of the owner to relinquish control, use or possession of a firearm; and monitoring and auditing of licences. The ECOWAS Convention and the Central African Convention require member States to impose a limit on the number of weapons a licence may cover. Among notable innovative practices, the Central African Convention envisages a subregional electronic database that will help verify the validity of licences granted at the national level for the possession of, carrying, use and trade in firearms by civilians.

42. Taken together, the African regional instruments commit 46 States to robust regulation of the civilian acquisition, possession and use of firearms. European Directive 91/477/EEC commits 27 States to a strong firearms control framework, while the Nadi Framework and the Andean Plan commit 11 States. Together, these instruments cover four regions and 84 countries. The common standards across regions not only help to clarify elements of best practices, but also contribute to the consolidation of minimum standards in the area, including with regard to the protection of human rights.

43. The Coordinating Action on Small Arms mechanism established by the Secretary-General has developed guidance on appropriate control measures, building on the standards described above, best practice guidelines and model regulations that have been developed at the regional and subregional levels. The standards, reflected in International Small Arms Control Standard 03.30 on national regulation of civilian access to small arms and light weapons, provide comprehensive guidance on the acquisition, possession and use of firearms.[54]

D. National legislation applicable to the civilian access to firearms

44. Many of the State contributions to the present report referred in detail to existing national legislation and other measures and initiatives taken to ensure respect for and protection of human rights in the context of civilian access to firearms. Analysis of these submissions showed that while all concerned States had legislation on civilian acquisition, possession and use of firearms, the degree of regulation varied greatly. The main approach of national regulations has been to attempt to strike a balance between legitimate firearm ownership and the interests of public safety and health and, importantly, to ensure the protection of human rights. National regulations generally allowed civilian access to firearms for such limited purposes as self-defence, sport shooting, subsistence or professional hunting, agriculture, forestry and species management and for cultural, historic or scientific reasons.

45. To date, a systematic and evidence-based analysis of the impact of firearms control, particularly as it relates to the occurrence of firearm-related violence (both fatal and non-fatal), is lacking. According to the United Nations Office on Drugs and Crime *Global Study on Homicide*, "at the national level, firearm and knife legislation restricting availability, accessibility and use has been implemented in various countries with varying degrees of success in preventing or reducing homicides committed with such weapons".[55] Studies

[54] See www.smallarmsstandards.org/isacs/0330-en.pdf.

[55] UNODC, *Global Study*, p.18.

conducted at the regional level provide some understanding of the success of regulatory measures designed to restrict the proliferation of private ownership of firearms and their impact on the reduction in firearms-related death and violence.[56] In several European countries, research has suggested that low firearm homicide rates point to a certain level of association between firearm ownership and firearm homicide.[57] In the Americas, the Inter-American Commission on Human Rights noted in its report that "the most successful experiences in crime prevention in the Hemisphere have focused mainly on dealing with the factors that make violence a recurring problem at the local level. These efforts have involved measures to ... regulate private possession of firearms."[58] It should be noted, however, that other factors may need to be taken into account, including the adoption alongside specific firearm legislation of a range of other measures in the field of criminal law, education and social programmes.

46. In the framework of the present report, some States have provided a self-evaluation of their respective domestic firearms regulations and how they contribute to the protection of human rights. The majority of those States that responded on those questions indicated that the regulation of civilian access to firearms had led to a reduction in homicides caused by firearms[59] and better protected the rights to life and security[60] and physical integrity of the person.[61] Furthermore, many States concurred in their responses that the very establishment of a legal framework to control the possession of firearms has helped prevent firearm-related violations.

47. Among the States providing specific examples of self-evaluation, the United Kingdom of Great Britain and Northern Ireland indicated that owing to the strict firearms regulations in the country, only 29 fatalities had resulted from offences involving firearms in the period 2013-2014. Australia noted that a there had been an ongoing, gradual decrease in the misuse of firearms and that research had found that a government firearms-buyback programme had cut suicides with the use of a firearm by 74 per cent. Honduras noted that the regulations it had adopted between 2000 and 2013 to control firearms had shown positive results. In Jamaica, national legislation had provided a critical framework for the establishment and implementation of standards and a framework to regulate the possession, use, transfer and disposal of civilian firearms.

48. The effectiveness of firearms control also depends on the enforcement mechanism in place. Thus, in the view of Madagascar, the effectiveness and impact of national regulation depends on the dissemination of public information on the content of the firearms

[56] European Commission, *Evaluation of the Firearms Directive*, final report, 2014 and N. Duquet and M. Van Alstein, *Firearms and Violent Deaths in Europe* (Brussels, Flemish Peace Institute, 2015). For studies at the national level, see N. Duquet and M. Van Alstein, *Gun Control in Belgium: A Review of Effects of the 2006 Weapons Law* (Brussels, Flemish Peace Institute, 2015); Government of Canada, "Firearms, accidental deaths, suicides and violent crime: an updated review of the literature with special reference to the Canadian situation"; working document, September 1998, chap. 8, available from www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/wd98_4-dt98_4/p8.html; People's Assembly (South Africa), Infographic: evaluating the impact of firearm regulation on gun-homicides, 2014, available from www.pa.org.za/blog/infographic-evaluating-impact-firearm-regulation-g; D. Cerqueira and J. M. P. de Mello, Pontifical Catholic University of Rio de Janeiro (Brazil), Department of Economics, "Evaluating a national anti-firearm law and estimating the causal effect of guns on crime", available from www.econ.puc-rio.br/pdf/td607.pdf.

[57] UNODC, *Global Study*, p. 69.

[58] Inter-American Commission on Human Rights, *Report on Citizen Security*.

[59] Belgium, Burundi and Mauritius.

[60] Ecuador and Burundi.

[61] Burkina Faso.

legislation and awareness-raising campaigns. In Montenegro, activities in the area of law enforcement as well keeping electronic records up to date contributed to more efficient performance in this sensitive field.

49. In this regard, States also responded that data were collected on the misuse of firearms,[62] either through a registry of firearms[63] or as part of the criminal justice system.[64] Such data were used to monitor licensing,[65] approve sanctions for illicit possession, and generate or monitor trends in rates of offending;[66] they were also used to indicate how those trends informed national and local[67] strategies to reduce and eradicate armed violence[68] and for the purposes of investigation and prosecution[69] as well as international and regional cooperation.[70]

50. While noting the positive impact of strict firearms control measures, some States indicated that the transnational challenges, such as the cross-border flows of small arms and light weapons and illegal acquisitions coming from conflicts in neighbouring countries,[71] hampered national efforts.[72] Other challenges that were identified included Internet sales of firearms and new technologies (see A/CONF.192/BMS/2014/1 and A/CONF.192/BMS/2014/2). It was suggested that such transnational challenges required coordinated international action.[73]

IV. Conclusions and recommendations

51. **The submissions received from States and other stakeholders and the observations of human rights bodies and mechanisms point to a correlation between civilian access to firearms, including lawfully acquired weapons, and levels of violence and insecurity, including in non-conflict settings. Firearm violence causes death, non-fatal physical injuries and psychological trauma, frequently leading to severe disability and an overall decline in a sense of public safety. Firearms-related injuries generate costs in terms of medical treatment, mental health services and criminal justice. There are also direct links between civilian access to firearms and violence against women and domestic violence more generally.**

52. **Firearms-related violence and insecurity therefore pose direct risks to the rights to life, security and physical integrity, and also affect other civil, political, social, economic and cultural rights such as the rights to health, education, an adequate standard of living and social security and the right to participate in cultural life (see A/54/2000, paras. 238-239 and E/CN.4/Sub.2/2002/39, para. 16). Given the potential harm and devastating impact of the misuse of firearms on the enjoyment of human rights, public policies with respect to civilian access to firearms should be reviewed and formulated through a human rights lens.**

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[62] Burkina Faso, Jamaica, Montenegro, the United Kingdom, Romania and the Philippines.
[63] Colombia, Paraguay and Peru.
[64] Estonia, Mauritius, the United Kingdom and Switzerland.
[65] Mauritius.
[66] New Zealand.
[67] The United Kingdom, Madagascar and New Zealand.
[68] Burkina Faso.
[69] The Philippines, Honduras and El Salvador.
[70] Montenegro.
[71] Burkina Faso.
[72] Burkina Faso.
[73] The United Kingdom.

53. Human rights law requires States to protect people from harmful private activities and to adopt appropriate regulatory and institutional frameworks. In the light of the harmful impact of firearms-related violence on a range of human rights, the High Commissioner reiterates the call of United Nations and regional human rights mechanisms for States to regulate the civilian acquisition, possession and use of firearms. Alongside preventive measures, States must provide victims of firearms violence with effective measures of protection and reparation, including access to adequate health care to ensure that they have the best possible chances of survival and rehabilitation. In particular, States must protect women and children who are particularly affected by the harmful impact of both lawful and illicit firearms possession.

54. On the basis of State practice, international and regional agreements and instruments and human rights mechanisms, the following measures that contribute to the protection of human rights can be identified:

(a) Adoption of adequate laws, regulations and administrative procedures to exercise effective control over the legal possession of firearms by all persons and companies under a State's jurisdiction through licensing, registration, monitoring, auditing and mandatory training;

(b) Creation of a licensing system that lays down clear criteria with respect to a previous criminal record, relevant restraining orders or mental health conditions in order to prevent persons who pose a significant risk of misusing firearms from possessing them;

(c) Imposition of appropriate penalties and/or administrative sanctions for offences involving the misuse or unlawful possession of firearms, the illicit sale of firearms and the unauthorized international transfer of firearms.

55. Firearm violence and the underlying proliferation of firearms, including illicit firearms, must be systematically measured, monitored and reported. While the primary responsibility lies with State authorities, United Nations and regional bodies and mechanisms and members of civil society, including human rights defenders, play an important role in this regard. States should systematize monitoring of and reporting on human rights violations and abuses committed with or facilitated by firearms, including the human rights impact of civilian access to firearms. Findings and recommendations of the United Nations mechanisms provide a useful baseline in this regard.